

Message Text

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ACTION EUR-12

INFO OCT-01 EURE-00 ISO-00 AS-01 L-03 EB-07 SS-15 SSO-00

SP-02 INR-07 INRE-00 /048 W

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FM AMEMBASSY BERN

TO SECSTATE WASHDC IMMEDIATE 2128

INFO AMCONSUL ZURICH

LIMITED OFFICIAL USE SECTION 1 OF 2 BERN 0684

STADIS////////////////////////////////////

FOR DEPUTY ASSISTANT SECRETARY VINE

E.O. 11652: N/A

TAGS: CFED, EFIN, SZ

SUBJECT: SEC ACTION AGAINST AMERICAN INSTITUTE COUNSELORS AND
OTHERS

REF: A) 75 BERN 4971, B) 75 BERN 4993, C) 75 STATE 280680,
D) STATE 28615

1. SUMMARY. FOUR DAYS OF NEGOTIATIONS HAVE RESULTED IN
WHAT APPEARS TO BE THE BASIS OF AN AGREEMENT WHICH MAY
LARGELY RESOLVE THE SWISS ASPECT OF THE AIC-SWISS CREDIT
BANK CASE. THE ELEMENTS OF A PLAN OF DISTRIBUTION WERE
DISCUSSED AND AGREED, IN PRINCIPLE AND AD REFERENDUM,
SUBJECT TO ACCEPTANCE BY THE SEC, OTHER GOVERNMENT AGENCIES
AND THE UNITED STATES DISTRICT COURT, AS WELL AS THE GOS
AND THE SWISS FEDERAL BANKING COMMISSION. WHILE SEVERAL
IMPORTANT POINTS WILL HAVE TO BE CLARIFIED, AND ACCEPTANCE
BY US AUTHORITIES IS BY NO MEANS CERTAIN, PROGRESS WAS
MADE. THE SWISS ATTITUDE THROUGHOUT WAS COOPERATIVE
AND FORTHCOMING, WELL BEYOND WHAT WE HAVE SEEN IN SIMILAR
CASES IN THE PAST. END SUMMARY.

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2. A U.S. DELEGATION, LED BY HAROLD RUSSELL, L/EUR

AND INCLUDING SUSAN KLINGAMAN, EUR/CE, IRWIN M. BOROWSKI, SEC, THEODORE LEVINE, SEC, AS WELL AS HARRY I. ODELL (FIRST DAY) AND EDSON W. KEMPE (THROUGHOUT) MET OVER A PERIOD OF FOUR DAYS, ON FEBRUARY 9, 11, AND 12 WITH GOS OFFICIALS. THE SWISS DELEGATION WAS LED BY BERNHARD MULLER, DEPUTY DIRECTOR, FINANCE DEPARTMENT AND INCLUDED CLAUDIO CARATSCH, DEPUTY OF HEAD OF POLITICAL DIVISION I IN POLITICAL DEPARTMENT, MR. FIVAZ, FINANCE DEPARTMENT AND ROGER GROSSENBACHER, DIVISION OF COMMERCE. SEC REPRESENTATIVES ALSO MET, OUTSIDE SWITZERLAND, WITH THE PRIVATE PARTIES AND WITH THEIR ATTORNEYS. THE GOS ALSO MET SEPARATELY WITH THE PRIVATE PARTIES.

3. ON FEBRUARY 12, THE USDEL GAVE GOS OFFICIALS A PROPOSED PLAN OF DISTRIBUTION, BASED ON THE DISCUSSIONS THAT HAD TAKEN PLACE UP TO THEN. USDEL EMPHASIZED THAT THE PLAN WAS BEING PRESENTED WITHOUT COMMITMENT.

AND WOULD HAVE TO BE APPROVED BY THE SEC, OTHER GOVERNMENT AGENCIES AND THE U.S. DISTRICT COURT. GOS ACCEPTANCE WAS LESS PROVISIONAL. WHILE THERE ARE OR MAY BE SOME PROBLEMS, THE FINANCE MINISTER (CHEVALLAZ) HAS ACCEPTED THE BROAD OUTLINES OF WHAT HAS BEEN PROPOSED, ALTHOUGH HE HAS NOT SEEN THE DETAILS. IT HAS ALSO BEEN DISCUSSED WITH THE CHAIRMAN OF THE SWISS FEDERAL BANKING COMMISSION. IT WILL BE PRESENTED TO THE FULL COMMISSION ON MONDAY. THE SWISS UNDERTOOK TO GET BACK TO US BY WEDNESDAY, FEBRUARY 18, WITH ANY COMMENTS OR PROBLEMS THEY MIGHT HAVE. USDEL (BOROWSKI) SAID HE WOULD MAKE EVERY EFFORT TO ARRANGE FOR A QUOTE FINAL UNQUOTE VERSION, TAKING THEIR AND OUR COMMENTS INTO ACCOUNT, TO BE DELIVERED TO THEM THROUGH THIS EMBASSY BY FRIDAY, FEBRUARY 20. ASSUMING AGREEMENT CAN BE REACHED, THIS VERSION TOGETHER WITH RELATED DOCUMENTS WILL BE PRESENTED TO JUDGE GESELL IN PUBLIC SESSION.

4. PLAN OF DISTRIBUTION IS AS FOLLOWS:

I. THE DISTRIBUTION BY THE SWISS BANKING COMMISSION (SBC) TO INVESTORS OF ALL ASSETS HELD BY MONDIAL COMMERCIAL LTD. IN THE VARIOUS SUB-ACCOUNTS AND ALL ASSETS HELD BY FRIENDS LIMITED OFFICIAL USE

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OF AIER, WERTREG OR MONTE SOLE IN A MANNER SATISFACTORY TO THE SECURITIES AND EXCHANGE COMMISSION (COMMISSION) AND THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (U.S. COURT) THE SPECIAL AUDITOR WITH THE APPROVAL OF THE SBC AND THE U.S. COURT SHALL DETERMINE ANY ADDITIONAL ASSETS OF THE PROGRESS GROUP TO WHICH INVESTORS ARE ENTITLED AND SUCH ASSETS WILL BE INCLUDED IN THE DISTRIBUTION.

II. A SPECIAL AUDIT SHALL BE CONDUCTED BY AN INTERNATIONAL AUDITOR IN ACCORDANCE WITH U.S. STANDARDS OF AUDITING APPOINTED BY SBC, SATISFACTORY TO THE COMMISSION AND APPROVED BY THE U.S. COURT.

A. THE SPECIAL AUDITOR SHALL GIVE APPROPRIATE CONSIDERATION TO THE AUDIT BEING PERFORMED BY CURATOR SO AS TO MINIMIZE ANY ADDITIONAL EXPENSE.

B. ALL INFORMATION OBTAINED BY THE SPECIAL AUDITOR AND CURATOR SHALL BE MADE AVAILABLE TO THE SBC AND THE COMMISSION.

C. NOTWITHSTANDING PARAGRAPH IIB ABOVE, UNLESS OTHERWISE AUTHORIZED BY SBC, NAMES OF INVESTORS WILL ONLY BE FURNISHED TO THE COMMISSION UNDER THE FOLLOWING ARRANGEMENT:

A. THE COMMISSION WILL COMMIT THAT SUCH INFORMATION WILL BE USED SOLELY FOR THE PURPOSES OF THE PLAN OF DISTRIBUTION.

B. THE INFORMATION WILL BE MADE AVAILABLE TO THE COMMISSION UNDER APPROPRIATE CONDITIONS TO ASSURE THAT SUCH INFORMATION WILL REMAIN UNDER THE JURISDICTION OF THE GOVERNMENT OF SWITZERLAND OR ANY AGENCY OF THE GOVERNMENT OF SWITZERLAND. THE INFORMATION WILL BE MADE AVAILABLE TO THE COMMISSION IN A MANNER AND AT A PLACE CONVENIENT FOR EXAMINATION BY THE COMMISSION.

D. WHERE THE COMMISSION OBTAINS ACCESS TO THE INFORMATION REFERRED TO IN PARAGRAPH IIB ABOVE, THE NAMES OF INVESTORS WILL BE OMITTED FROM SUCH DOCUMENTS AND A NUMERICAL CODE WILL BE SUBSTITUTED. THE CODE WILL BE MAINTAINED UNDER THE JURISDICTION OF THE GOVERNMENT OF SWITZERLAND OR AN APPROPRIATE AGENCY OF THE GOVERNMENT OF SWITZERLAND WILL BE PROVIDED TO THE COMMISSION UNDER THE SAME TERMS AND CONDITIONS AS SET FORTH IN PARAGRAPH II.C ABOVE.

E. SBC SHALL AUTHORIZE AND DIRECT THAT THE NAMES OF LIMITED OFFICIAL USE

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INVESTORS SHALL BE PROVIDED TO THE COMMISSION WITHOUT

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FM AMEMBASSY BERN

TO SECSTATE WASHDC IMMEDIATE 2129

INFO AMCONSUL ZURICH

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FOR DEPUTY ASSISTANT SECRETARY VINE

THE LIMITATIONS SET FORTH IN PARAGRAPH II.C ABOVE

IF:

1. SBC DETERMINES THAT FRAUD OR MISREPRESENTATION HAS OCCURRED IN CONNECTION WITH THE SPECIFIC INVESTMENTS WITH WHICH THE INVESTORS ARE INVOLVED
2. WRITTEN CONSENT OF THE INVESTORS IS OBTAINED; OR
3. THE INFORMATION IS PROVIDED TO CONFIRM INFORMATION ONLY POSSESSED BY THE COMMISSION.

III. THE SBC WILL FREEZE ALL ASSETS HELD BY THE PROGRESS GROUP AS DESCRIBED IN PARAGRAPH I. ABOVE, PENDING THE SPECIAL AUDITOR'S REPORT REFERRED TO IN PARAGRAPH II. ABOVE AND THE DISTRIBUTION DESCRIBED IN PARAGRAPHS I., V., AND IX. HEREIN PROVIDED HOWEVER, THAT INTERIM PAYMENTS CAN BE MADE UPON APPROVAL OF SBC AND THE U.S. COURT.

IV. PROGRESS GROUP WILL UNDERTAKE TO SBC THAT IT WILL NOT DIRECTLY, OR INDIRECTLY THROUGH AFFILIATES, ENGAGE IN ANY ACTIVITIES RELATED TO THE MANAGEMENT OF THE FUNDS OR ASSETS OF U.S. CITIZENS, INDIVIDUALLY OR COLLECTIVELY, LIMITED OFFICIAL USE

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OR THE OFFER OR SALE OF SECURITIES IN THE UNITED STATES. PROGRESS GROUP WILL WAIVE ANY OBJECTION TO THE SBC'S ENFORCEMENT OF THIS UNDERTAKING.

V. THE COMMISSION WILL SEEK TO OBTAIN AN ORDER OF THE U.S. COURT PROVIDING THAT THE PROGRESS GROUP WILL NOT BE LIABLE TO ANY INVESTOR SOLELY BY VIRTUE OF ANY ACTION TAKEN UNDER THIS PLAN OF DISTRIBUTION, WHERE SUCH ACTION

HAS BEEN APPROVED BY SBC AND THE U.S. COURT.

VI. AFTER THE SPECIAL AUDIT, THE LIQUIDATION OF THE RESERVED LIFE INCOME SECURITIES SHALL BE ACCOMPLISHED BY SBC CAUSING THE DELIVERY OF THE ASSETS RELATING TO THE RESERVE LIFE INCOME SECURITIES TO AIER IN A MANNER APPROVED BY THE U.S. COURT.

VII. THE SPECIAL COUNSEL SHALL CONSULT WITH THE SPECIAL AUDITOR AND REPORT TO THE U.S. COURT ON THE PROCESS OF DISTRIBUTION AND ANY FRAUD OR MISMANAGEMENT WITH RESPECT TO THE INVESTMENT OF THE U.S. INVESTORS. THE SPECIAL COUNSEL SHALL HAVE ACCESS TO THE INFORMATION TO BE MADE AVAILABLE TO THE COMMISSION UNDER THE SAME TERMS AND CONDITIONS AS DESCRIBED IN PARAGRAPHS II.B AND II.C ABOVE. A COPY OF ANY REPORT (S) BY THE SPECIAL COUNSEL SHALL BE MADE AVAILABLE TO THE SBC.

VIII. ALL ACTIVITIES IN CONNECTION WITH ACCOMPLISHING THE DISTRIBUTION SHALL BE DONE IN A MANNER TO MINIMIZE COSTS TO INVESTORS. THE QUESTION OF COSTS OF DISTRIBUTION SHALL BE SUBJECT TO FURTHER DISCUSSION.

IX. THE U.S. INVESTOR SHALL HAVE THE OPTION OF HAVING FUNDS OR ASSETS RETURNED TO HIM IN THE UNITED STATES OR BEING MAINTAINED IN SWITZERLAND ON AN INDIVIDUAL ACCOUNT BASIS SO LONG AS SUCH ARRANGEMENT IS CONSISTENT WITH THE LAWS OF SWITZERLAND AND THE FEDERAL SECURITIES LAWS. THE PROCEDURES WITH RESPECT TO THE DISTRIBUTION AND THE DOCUMENTS RELATED THERETO, SHALL BE SATISFACTORY TO THE COMMISSION AND THE U.S. COURT.

5. THE ONLY POINT WHICH SEEMED TO POSE PROBLEMS FOR LIMITED OFFICIAL USE

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THE SWISS AT THIS JUNCTURE WAS POINT IV. UNDER SWISS LAW, THEY SAID, PROGRESS CANNOT WAIVE ITS RIGHT TO APPEAL.

6. THERE IS A POTENTIALLY MORE SERIOUS PROBLEM RELATED TO THE TERMS FOR SWISS CREDIT BANK ACCEPTANCE. THEIR LAWYERS ASKED FOR IMMEDIATE CANCELLATION OF THE STIPULATION UNDER WHICH THEY TRANSFERRED FUNDS TO THEIR U.S. BRANCH WHEN (AND IF) GESELL APPROVES THE PLAN OF DISTRIBUTION. BOROWSKI TOLD THEM HE THOUGHT THAT ISSUE SHOULD NOT BE RAISED WITH GESELL AS A CONDITION. GOS OFFICIALS INDICATED UNDERSTANDING, BUT NOT, AS YET, ACCEPTANCE.

7. AMONG THE DOCUMENTS DISCUSSED ON FEBRUARY 12 WAS THE PROPOSAL OF PROGRESS. IT WAS AGREED THAT THIS

PROPOSAL WAS SUFFICIENTLY SIMILAR TO THE PLAN OF DISTRIBUTION THAT THE PLAN ITSELF WOULD BE THE DOCUMENT THAT GOS OFFICIALS WOULD USE. HOWEVER, ONE OF THE ATTORNEYS FOR PROGRESS TOLD GOS THAT HE WOULD NOT BE ABLE TO SIGN OFF ON THE PROGRESS PROPOSAL UNTIL AFTER HE HAD CONSULTED HIS CLIENT. WE SHOULD HEAR TODAY, FEBRUARY 13, AND WILL CABLE THIS INFORMATION AS SOON AS IT IS RECEIVED.

8. IT WAS AGREED THAT REMAINING PROBLEMS WOULD BE WORKED OUT THROUGH THIS EMBASSY. MULLER SAID HE WOULD KEEP US FULLY INFORMED.

9. EMBASSY COMMENT: IT IS CLEAR, FROM THE ATTITUDE OF GOS OFFICIALS THROUGHOUT, THAT THE GOS HAS DECIDED AT THE HIGHEST LEVEL TO COOPERATE AS FULLY AS POSSIBLE IN THIS CASE. SWISS AGREEMENT, EVEN IN PRINCIPLE AND AD REFERENDUM, TO GO ALONG WITH A JOINT AUDIT AND EXCHANGE OF INFORMATION ALONG THE LINES OF THE PLAN OF DISTRIBUTION, IS UNUSUAL. FOR THE SWISS, THE IMPORTANT QUESTION WILL BE WHETHER WE ARE ABLE TO MEET WHAT THEY CONSIDER TO BE THEIR MINIMAL REQUIREMENTS WITH REGARD TO THE EXCHANGE OF INFORMATION IN THIS CASE AND PREVENTION OF THE USE OF SOME OF IT BY AGENCIES OTHER THAN THE SEC. THE ANSWER WILL AFFECT THEIR HANDLING OF THIS CASE AS WELL AS THEIR WILLINGNESS TO COOPERATE LIMITED OFFICIAL USE

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IN FUTURE CASES.

10. SUSAN KLINGAMAN IS HANDCAR
YING COPIES OF ALL
DOCUMENTS TOGETHER WITH DETAILED ACCOUNTS OF MEETINGS
WITH GOS OFFICIALS.
DAVIS

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: BUSINESS FIRMS, FOREIGN INVESTMENTS, FRAUDS, INVESTIGATIONS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 13 FEB 1976
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976BERN00684
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760055-0848
From: BERN
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1976/newtext/t19760253/aaaabtpw.tel
Line Count: 316
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: STADIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: STADIS
Reference: 76 BERN 4971, 76 BERN 4993, 76 STATE 280680
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 10 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <10 MAY 2004 by ifshinsr>; APPROVED <01 JUL 2004 by morefirh>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SEC ACTION AGAINST AMERICAN INSTITUTE COUNSELORS AND OTHERS
TAGS: CFED, EFIN, SZ, US, AMERICAN INSTITUTE OF COUNSELORS
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006